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FCC MAIL ROOM

Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20024

Re: CC Docket Nos. 96-45 and 97-160

Dear Ms. Salas:

Please find enclosed for filing an original and eleven copies of the Opposition by California to Petition for Reconsideration in the above-referenced dockets. Also enclosed is one additional copy of this document. Kindly file-stamp this copy and return it to me in the enclosed self-addressed envelope

California is also providing an electronic copy of these comments via your ECFS system.

Thank you for your attention to this matter. If you have any questions, I can be reached at (415) 703-2047.

Sincerely,

Ellen S. LeVine
Attorney for California

Hand Delivered 02/11
ENCLOSURE

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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In the Matter

Federal-State Joint Board on Universal
Service.

CC Docket No. 96-45

Forward Looking Mechanism For High
Cost Support for Non-Rural LECs.

CC Docket No. 97-160

OPPOSITION BY CALIFORNIA TO PETITION FOR RECONSIDERATION

The People of the State of California and the California Public Utilities Commission ("California" or "CPUC") hereby submit this opposition to the petition for reconsideration of the Federal Communications Commission's ("FCC") Tenth Report and Order, filed by the Roseville Telephone Company ("Roseville") in the above-captioned proceeding. For the reasons discussed below, the petition should be denied.

Background

I. BACKGROUND

In its Tenth Report and Order, the FCC applied the definition of a rural telephone company, contained in section 153(37) of the Telecommunications Act of 1996 ("1996

Act”), in distinguishing between rural and non-rural carriers for the purpose of determining the level of federal universal service support for a particular carrier. Under the 1996 Act, a local exchange carrier may qualify as a “rural telephone company” if it “provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines.” 47 U.S.C. § 153(37).

As a rural telephone company, a local exchange carrier is exempt from the interconnection obligations of section 251(c) of the 1996 Act until a state commission makes a contrary determination under the terms of section 251(f)(1)(A)&(B). A local exchange carrier “with fewer than 2 percent of the Nation’s subscriber lines installed in the aggregate nationally” may also petition a state commission for suspension or modification of the interconnection requirements provided in sections 251(b) or (c) of the 1996 Act. 47 U.S. C. § 251(f)(2). Section 251(f)(2) sets forth the criteria that a state will consider in granting such a petition.

Section 253(f) further provides that a state may require a rural telephone company to meet the eligibility requirements of section 214(e)(1) before being permitted to provide service in a rural area. 47 U.S.C. § 253(f). Section 214(e)(1) sets forth criteria that an carrier must meet in order to be eligible to receive universal service support in accordance with section 254, the universal service provisions of the 1996. In section 214(e)(5), a state shall define a service area of a rural telephone company as the “company’s ‘study area’” until the Federal-State Joint Board on Universal Service establishes a different definition. 47 U.S.C. § 214(e)(5).

In its petition, Roseville asks the FCC to change its definition of a rural telephone company so that a company like Roseville, presently classified by the FCC as a Class A non-rural carrier, will qualify as a non-rural carrier. Roseville indicates that it currently serves 128,000 access lines, and, as a result, falls outside the statutory definition of rural telephone company adopted by the FCC for universal service purposes. Roseville proposes that the FCC allow local exchange carriers with less than 2% of access lines nationwide to qualify as rural carriers, or, alternatively, to redefine a rural carrier as one with 200,000 access lines or less in its study area. Roseville claims that without a redefinition of rural carriers for universal service purposes, customers of carriers with less than 200,000 access lines in a study area will likely experience “significantly greater rate shock.”¹

For the reasons that follow, Roseville’s petition is without merit.

II. ARGUMENT

Under the 1996 Act, Congress expressly refers to a rural telephone company for differing treatment under both the Act’s interconnection and universal service provisions. “For the purposes of this Act, unless the context otherwise requires,” the definition of a rural telephone company is the same under either of these provisions. 47 U.S.C. § 153. While Roseville points out that the FCC declared that the agency was not statutorily bound to apply this definition for universal service purposes, it is not apparent from the 1996 Act that Congress intended disparate treatment of rural carriers for different

¹ Petition (“Pet.”) at 1.

purposes under the Act. As discussed above, both the interconnection and universal service provisions of the Act refer to a rural telephone company, which evidences Congress' intent to treat such a company the same for both interconnection and universal service purposes. In any event, the FCC adopted the definition of a rural telephone company for universal service purposes, which California believes was proper.

Roseville's rationale for modifying this definition is not compelling.

First, Roseville's plea that it should be treated like a rural carrier is incompatible with its request, granted by the CPUC, to be treated as a competitive carrier for state ratemaking purposes. Under the CPUC's New Regulatory Framework ("NRF"), Roseville has been subject to a system of price caps, earnings controls, and limited pricing flexibility in lieu of traditional rate of return regulation since January 1, 1997. The CPUC agreed with Roseville that NRF regulation was appropriate for Roseville in order to allow Roseville to more effectively respond to competition in its service territory. To be sure, Roseville is one of the fastest growing areas in Northern California. Within commuting distance of Sacramento, the state's capital, Roseville's service territory has been viewed as highly desirable by major high technology firms which have located there. Indeed, Roseville's growth in access lines has increased 7 percent in the last four years. In response to this extraordinary growth, Roseville has installed state-of-the-art fiber to replace its copper facilities, and has begun to install high-speed access lines in order to serve high tech industries and other customers. At the same time, because of the

expanding economy and the presence of high technology firms, the Roseville area presents favorable competitive opportunities for other communications providers. To date, thirty-two facilities-based competitive local exchange carriers are authorized to provide service in Roseville's service area.

The presence of robust, economic opportunities that has spawned competitive providers in Roseville's market is one of the reasons why the CPUC agreed that Roseville should be subject to NRF regulation to better respond to such competition. Roseville's market is hardly descriptive of the typical rural market, where carriers serving such areas face little or no competition from other providers. To the contrary, Roseville more closely resembles the four other local exchange carriers in California subject to NRF regulation² than rural telephone companies, even though Roseville serves fewer access lines. In light of the above, consistent with the CPUC's ratemaking treatment of Roseville as a NRF carrier facing competition in its market, it is reasonable and proper to treat Roseville as a non-rural carrier for all purposes, including federal universal service funding.³

Roseville nevertheless complains that the distinction between rural and non-rural carriers based on whether the carrier serves more than 100,000 access lines fails to consider the "tremendous diversity in size, and thus economies in scope and scale, among

² These carriers are Pacific Bell, GTE California, Inc., GTE Contel of California, and Citizens Telecommunications Company of California.

³ California is further concerned that if Roseville is treated as a rural carrier for universal service purposes, Roseville inevitably will seek similar treatment under section 251(f), and thereby be exempt from the interconnection obligations of sections 251(b) and (c).

such companies.”⁴ Roseville misses the point. The issue is not where the line is drawn to distinguish rural from non-rural carriers, but whether the line that is drawn unfairly impacts the customers of certain non-rural carriers, such as Roseville. While Roseville contends that the loss of hold-harmless support to non-rural carriers like Roseville will cause “significant rate shock” to their customers, that contention is belied by Roseville’s most recent request to the CPUC to increase its customer rates. In its last rate case, filed in 1995 with rates effective in 1997, Roseville had proposed a monthly residential customer rate of \$23.60, excluding state surcharges. With the addition of the federal line charge, this amount would have increased to \$27.10, excluding state surcharges. By comparison, without hold-harmless support, Roseville’s actual residential customer rates would be \$26.04 at most.⁵ The “significant rate shock” of which Roseville complains, if treated as a non-rural carrier, apparently would not have been substantial in 1995, when Roseville proposed a higher monthly rate for its residential customers beginning in 1997.

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⁴ Pet. at 4.

⁵ The \$26.04 rate is calculated as follows: Roseville’s current authorized basic rate of \$18.90, plus the \$3.50 federal end user charge, plus an additional \$4.04 (based on Roseville’s Reply Comments on the interim hold-harmless provision) resulting from a flash cut of federal line support. However, this calculation assumes that the full \$4.04 is affixed to basic residential rates instead of access rates, rates for custom calling features, toll or other rates. In addition, Roseville assumes that the loss of hold-harmless support will require only its customers to absorb the lost federal line support, but nothing precludes the CPUC from recouping the loss from all providers of intrastate telecommunications services and their customers. Alternatively, California could choose to utilize a combination of rate increases and state universal service funds to address the shortfall in a manner that ensures that rates remain affordable.

III. CONCLUSION

For the reasons stated, the FCC should affirm its use of the statutory definition of rural telephone company contained in the 1996 Act for universal service purposes, and deny Roseville's petition.

Respectfully submitted,

PETER ARTH, JR.
LIONEL B. WILSON
ELLEN S. LEVINE

By:



Ellen S. LeVine

Attorneys for the People of the
State of California and the
California Public Utilities Commission

505 Van Ness Ave.
San Francisco, CA 94102
Phone: (415) 703-2047
Fax: (415) 703-2262

February 3, 2000

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document to be served upon all known parties listed below by mailing, by first-class mail, postage prepaid, a copy thereof properly addressed to each party.

Dated at San Francisco, California, this 3rd day of February, 2000.



Ellen S. LeVine

Paul J. Feldman, Esq.
Fletcher, Heald & Hildreth, PLC
1300 North Seventeenth Street, 11th Floor
Arlington, Virginia 22209

Glenn H. Brown
McLean & Brown
9011 East Cedar Waxwing Dr.
Chandler, Arizona 85248